

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

B-218093

**FILE:**

**DATE:** February 15, 1985

Command Systems

**MATTER OF:**

**DIGEST:**

1. An allegation that an unrealistically low bid is due to the bidder's failure to understand what may be required under the contract involves the agency's affirmative determination of bidder responsibility which GAO will not review. In addition, the fact that an unreasonably low or below-cost bid suggests the possibility of a "buy-in" does not provide any basis on which to submit a protest.
2. Mathematically unbalanced bid may be accepted. Only when a bid is materially unbalanced (that is, because a solicitation estimate of the anticipated quantity of work is not a reasonably accurate representation of actual anticipated needs, acceptance of an unbalanced bid would provide no assurance that the award would result in the lowest cost to the government) must the bid be rejected.

Command Systems (Command) protests the award of a contract for brochure addressing and distributing services to Research Analysis Institute, Inc. (RAI), under invitation for bids (IFB) No. SBD-85-1 issued by the Savings Bond Division (SBD), Department of the Treasury.

We summarily dismiss the protest under section 21.3(f) of our Bid Protest Regulations, 49 Fed. Reg. 49,417, 49,421 (1984) (to be codified at 4 C.F.R. § 21.3(f)), for failure to state a valid basis for protest.

Command states that all (three) bidders for this procurement, other than Command, submitted similar prices for the services in question and that RAI verified its price for those services as correct.

Command essentially alleges that RAI submitted unreasonably low or below cost prices for the services in question. For instance, Command states that RAI bid

approximately \$133 for services which would cost Command over \$36,000 to perform. Command argues that, even if RAI "uses different techniques" to perform these services, it still is impossible for RAI to perform at its price. Command thus maintains that RAI either does not understand the requirement or, in the alternative, intends to "buy-in." Command concludes that had SBD prepared a cost estimate for the services, it would have realized that only Command submitted realistic prices for the services.

There is no legal basis to object to an award on the basis of a below-cost bid. Western Waste Management, B-216392, Sept. 24, 1984, 84-2 C.P.D. § 344; Gulf Coast Defense Contractors, Inc., B-212641, Feb. 28, 1984, 84-1 C.P.D. ¶ 243; United Contract Services, Inc., B-209941, May 24, 1983, 83-1 C.P.D. ¶ 560. Rather, Command's allegation that RAI's prices for certain services are below cost or unreasonably low due to a lack of understanding of the requirement involves the type of agency affirmative determination of a bidder's responsibility which we will not review. Gulf Coast Defense Contractors, Inc., B-212641, supra. Our reason for not reviewing such responsibility determinations is that they are based upon the subjective business judgment of procuring officials and thus not readily susceptible to reasoned review. United Contract Services, Inc., B-209941, supra.

Command also alleges that RAI intends to "buy-in." The submission of a below-cost bid, with the expectation of an increase in the contract amount through unnecessary or excessively priced change orders or of receiving follow-on contracts at artificially high prices, is known as "buying-in." Western Waste Management, B-216392, supra. Such a bidding approach is not illegal. Contracting officers, however, are required to "take appropriate action to ensure buying-in losses are not recovered" through change orders or otherwise. See Federal Acquisition Regulation, 48 C.F.R. § 3.501-2(a) (1984); Western Waste Management, B-216392, supra.

Finally, Command protests that RAI may have enhanced prices for some services in order to offset its unreasonably low prices for the services in question. A bid based on nominal prices for some work and enhanced prices for other work is mathematically unbalanced. Central Texas College, B-216388, Sept. 26, 1984, 84-2 C.P.D. ¶ 361; Edward B. Friel, Inc., 55 Comp Gen. 231 (1975), 75-2 C.P.D. § 164. Even if RAI's bid were mathematically unbalanced, it could

be accepted. Only when a bid is materially unbalanced (i.e., because a solicitation estimate of the anticipated quantity of work "is not a reasonably accurate representation of actual anticipated needs," acceptance of an unbalanced bid would provide no assurance that the award would result in the lowest cost to the government) must the bid be rejected. Edward B. Friel, Inc., 55 Comp. Gen. 321, supra; Central Texas College, B-216388, supra. Command has made no allegation that material unbalancing exists or that RAI's bid does not result in the lowest cost to the government.



Comptroller General  
of the United States